

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Ephriam Valdillez,
Plaintiff,
v.
Charles Ryan, et al.,
Defendant.

CV 09-452 TUC DCB

ORDER

Standard of Review

15 The duties of the district court, when reviewing a Report and Recommendation of a
16 Magistrate Judge, are set forth in Rule 72(b) of the Federal Rules of Civil Procedure and 28
17 U.S.C. § 636(b)(1). The district court may “accept, reject, or modify, in whole or in part, the
18 findings or recommendations made by the magistrate judge.” Fed.R.Civ.P. 72(b), 28 U.S.C. §
19 636(b)(1). When the parties object to a Report and Recommendation (R&R), “[a] judge of the
20 [district] court shall make a *de novo* determination of those portions of the [R&R] to which
21 objection is made.” 28 U.S.C. § 636(b)(1); *see Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).
22 When no objections are filed, the district court does not need to review the R&R *de novo*. *Wang*
23 *v. Masaitis*, 416 F.3d 992, 1000 n. 13 (9th Cir.2005); *United States v. Reyna-Tapia*, 328 F.3d
24 1114, 1121-22 (9th Cir.2003) (en banc).

Report and Recommendation

26 On June 29, 2010, the Honorable Glenda E. Edmonds, United States Magistrate Judge,
27 filed a R&R in this action. The R&R advises the Court to deny the Petition for Writ of Habeas
28 Corpus. The Magistrate Judge found the Petitioner failed to present his claims to the Arizona
Court of Appeals, and “[a]ccordingly, they were not properly exhausted. He may not return to

1 state court to exhaust them and is therefore precluded from raising them in state court. "His
2 claims are procedurally defaulted." (R&R at 4.)

3 The parties were sent copies of the R&R and instructed that, pursuant to 28 U.S.C. §
4 636(b), they had 10 days to file written objections to the R&R. *See also*, Federal Rule of Civil
5 Procedure 72(b) (party objecting to the recommended disposition has ten (10) days to file
6 specific, written objections). To date, no objections have been filed.

7 Pursuant to 28 U.S.C. § 636(b), this Court makes a *de novo* determination as to those
8 portions of the R&R to which there are objections. 28 U.S.C. § 636(b)(1)(C) ("A judge of the
9 court shall make a de novo determination of those portions of the report or specified proposed
10 findings and recommendations to which objection is made.") To the extent that no objection has
11 been made, arguments to the contrary have been waived. *McCall v. Andrus*, 628 F.2d 1185,
12 1187 (9th Cir. 1980) (failure to object to Magistrate's report waives right to do so on appeal); *see*
13 *also*, Advisory Committee Notes to Fed. R. Civ. P. 72 (citing *Campbell v. United States Dist.*
14 *Court*, 501 F.2d 196, 206 (9th Cir. 1974) (when no timely objection is filed, the court need only
15 satisfy itself that there is no clear error on the face of the record in order to accept the
16 recommendation)).

17 The Court has reviewed the R&R and considers it to be thorough and well-reasoned; it
18 is neither clearly erroneous nor contrary to law. *United States v. Remsing*, 874 F.2d 614, 617-
19 618 (9th Cir. 1989). The R&R shall, therefore, be accepted pursuant to 28 U.S.C. § 636(b)(1).
20 The Court adopts the recommendation of the Magistrate Judge. For the reasons stated in the
21 R&R, the Court denies the Petition as procedurally defaulted.

22 **Accordingly,**

23 **IT IS ORDERED** that the Report and Recommendation [Doc. # 28] is adopted as the
24 opinion of the Court.

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1 **IT IS FURTHER ORDERED** that Petition [Doc. # 1] is DENIED; the Clerk of the
2 Court shall enter judgment accordingly.

3 DATED this 13th day of August, 2010.

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David C. Bury
United States District Judge